In the Supreme Court of the United States

OCTOBER TERM, 1966.

No. 923

JEFFERSON CONSTRUCTION CO. OF FLORIDA, A FLORIDA CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners were successful bidders on a contract with the Army Corps of Engineers to construct a levee in Florida. They seek to recover unanticipated extra sums which were expended, allegedly because of misleading plans prepared by the government. They claim that the plans which accompanied the specifications set forth a drawing which provided for an adjacent "borrow pit" which was not to exceed 100 feet in bottom width. Assertedly in reliance upon

this drawing and a profile which accompanied it, petitioners' subcontractor procured equipment for excavation which did not suffice to excavate the earth actually required to construct the levee, and they were required to procure additional equipment and make a borrow pit as much as 100 feet wider than they had estimated from the plans. The contracting officer rejected their claim for extra compensation and petitioners sought review before the Corps of Engineers Board of Contract Appeals. The Board upheld the decision of the contracting officer. The Board found that paragraph 2-03 of the technical provisions put petitioners on notice that

> It is recognized that variations in the nature of the materials encountered and the quantity of fill required for the levees will result in the width and/or depth of the borrow pits being greater than the "Required Continuous Borrow Pit Section" indicated on the drawings.

The Board further found that the plans and specifications, when read together, enabled petitioners to make computations which would have indicated the necessary width of the borrow pit. Additionally, the Board pointed out that the drawing upon which petitioners relied specifically advised them that "Bottom widths of required continuous borrow pit section shall be as shown on the profile *except as otherwise provided in the specifications*" (emphasis added). Petitioners loss, it was held, was caused by their carelessness in not basing their estimates on all of the materials provided.

The Court of Claims upheld the Board's determination. The court found that although the drawings may have been misleading, petitioners were cautioned to consult the specifications and that "[T]echnical Provision 2.03a of the specifications * * * could not have been read by any thinking bidder without conveying the clear warning that the borrow pit dimensions shown in the drawings were probably not enough to provide sufficient fill for the levee requirements". The court further accepted as unchallenged the Board's finding that petitioners could have computed mathematically the necessary width of the borrow pit.

There is no occasion for further review by this Court. The decision of the court below was based upon its conclusion that there was ample support in the administrative record for the findings of the Board of Contract Appeals. This conclusion was plainly correct and, in any event, turned wholly upon the particular facts of the case.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

THURGOOD MARSHALL,
Solicitor General.

JANUARY 1967.

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